

CHRISTOPHER P. BURKE, ESQ.  
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 Attorney for Debtor  
 in Possession

ECF FILED ON 08/19/09

UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

In Re	)	BK-S-09-23539-MKN
	)	Chapter 11
ASCENDANT UTAH, LLC.,	)	
	)	
Debtors.	)	DATE: 09-16-09
	)	TIME: 9:30 A.M.

APPLICATION TO EMPLOY ATTORNEY UNDER GENERAL RETAINER

The Debtor in Possession, ASCENDANT UTAH, LLC., (hereinafter "Debtor" or "Ascendant"), by and through its attorney, CHRISTOPHER P. BURKE, ESQ., respectfully applies to this Court, for an Order approving the Application to Employ Attorney Under General Retainer. This Application is brought pursuant to 11 U.S.C. Section 327, Bankruptcy Rule 20014 and the Guidelines of the U.S. Department of Justice, Office of the United States Trustee - Region 17 ("Guidelines").

I.

**GUIDELINES SECTION 2.1 - COMPLIANCE**

Pursuant to Guidelines Section 2.1, a copy of this Application for approval of employment of professional persons under 11 U.S.C. §327 and Bankruptcy Rule 2014 will be transmitted to the United States Trustee contemporaneously with the filing of this Application.

**PROFESSIONAL PERSONS TO BE EMPLOYED**  
**STATEMENT RE: DISINTERESTED PERSONS**

Applicant wishes to employ CHRISTOPHER P. BURKE, ESQ., attorney admitted to practice in this Court, as counsel for the Debtor to represent or assist the Debtor in carrying out its duties under Title 11, United States Code, in this bankruptcy proceeding. (Bankr.R.2014(a) and (b)).

**III.**  
**STATEMENT OF NECESSITY FOR EMPLOYMENT**  
**OF PROFESSIONAL PERSONS**

It is necessary for employment of the professional persons for whom employment is sought by this Application as the Applicant requires professional assistance in the areas where service is to be rendered in this case. (Bankr.R.2014(a); Guidelines Section 2.1.1).

The specific reason for employment and the task that CHRISTOPHER P. BURKE, ESQ. will perform is to represent the Debtor in all respects with regards to the administration of the Chapter 11 proceedings and to represent the Debtor with respect to the confirming of a Disclosure Statement and Plan and resolving objections and allowance of claims. Also, to defend the Debtor and/or initiate any adversary proceeding on behalf of the Debtor and to serve as a liaison between the United States Trustee and all requests by the Trustee.

**IV.**  
**STATEMENT OF SCOPE OF PROFESSIONAL**  
**SERVICES TO BE RENDERED**

The scope of services to be rendered by said professional(s)

are as follows:

1. To institute, prosecute, or defend any lawsuits, adversary proceedings, and/or contested matters arising out of this bankruptcy proceeding in which Applicant may be a party;

2. To assist in the recovery and obtaining necessary Court approval for recovery and liquidation of estate assets, and to assist in protecting and preserving the same where necessary;

3. To assist in determining the priorities and status of claims and in filing objections thereto where necessary;

4. If applicable, to assist in preparation of a disclosure statement and Chapter 11 plan;

5. To advise Applicant and perform all other legal services for the Applicant which may be or become necessary in this bankruptcy proceeding. (Bankr.R.2014(a); Guidelines Section 2.1.1).

#### V.

#### STATEMENT FOR REASONS FOR SELECTION OF PROFESSIONALS

Applicant has selected CHRISTOPHER P. BURKE, ESQ., because said professional person has experience in matters of this character, and the scope of professional services to be rendered, and because Applicant believes that CHRISTOPHER P. BURKE, ESQ. is well qualified to represent Applicant as counsel in this proceeding, and that employment of said firm would be in the best interests of the estate.

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VI.

STATEMENT RE: TERMS OF EMPLOYMENT AND  
PROPOSED ARRANGEMENT FOR COMPENSATION

1. Disclosure of Amount and Source of Retainer Received  
(11 U.S.C. Section 329(a), Bankr.R.2016(a) and 2016(b),  
Guidelines Section 2.1.2): CHRISTOPHER P. BURKE, ESQ. has  
received, pre-petition, a retainer in this matter in the amount  
of \$11,039.00, which includes the filing fee required to be filed  
in this case. The source of those funds was from the Debtor.  
These funds are for services to be rendered in contemplation of  
or in connection with the above-captioned bankruptcy case.

2. Terms and Condition of Employment Agreement: 11 U.S.C.  
Section 328(a) authorizes Applicant, with Court approval, to  
employ said professional persons "on any reasonable terms and  
conditions of employment, including on a retainer, on an hourly  
basis, or on a contingent fee bases." Applicant wishes to retain  
said professional persons under a general retainer, at the hourly  
rates charged by said professional persons, due to the unknown  
length and extent of services to be performed by said  
professional persons for Applicant. 11 U.S.C. Section 328(a),  
Bankr.R.2014(a).

3. Current Hourly Rates Charged by Professional, and Other  
Charges (Guidelines Section 2.1.2): The current hourly rates  
charged by professional persons expected to render services  
pursuant to the within Application are as follows:

A. Not exceeding \$400.00 per hour for Christopher P.  
Burke, Esq.

B. Not exceeding \$100.00 per hour for paralegals or law clerks.

Other charges that may be considered in an application for compensation include, but are not limited to:

- A. Messenger service;
- B. Postage and delivery;
- C. Process service and investigator charges;
- D. Copy charges;
- E. Computer research and word processing charges;
- F. Telephone and facsimile charges;
- G. Travel expenses;
- H. Miscellaneous expenses necessarily incurred in connection with the scope of services to be performed. Guidelines Section 2.1.2.

## VII.

### STATEMENT RE: PAYMENTS MADE AND SHARING OF COMPENSATION

To the best knowledge of Applicant, no payments have previously been made or promised to said professional persons for services rendered or to be rendered in any capacity whatsoever in connection with the case except as set forth herein, and no agreement or understanding exists between said professional persons and any other entity for the sharing of compensation to be received for services rendered in connection with this case.

(Bankruptcy Rule 2016(a); Guidelines Sections 2.1.4).

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## VIII.

**STATEMENT RE: PRE-PETITION SERVICES ("GUIDELINES" SECTION 2.1.3)**

The Professional persons have not performed any work for the Debtor pre-petition other than general bankruptcy advice and the preparation of the petition, schedules, and applications necessary to file the bankruptcy petition, except as set forth above. No further work has been performed for the Debtor by the Professional person. (Guidelines Section 2.1.3).

## IX.

**PROFESSIONAL DISCLOSURE (GUIDELINES SECTION 2.1.4)**

The within Application is accompanied by a Declaration/Verified Statement showing that the professional persons comply with the requirements of 11 U.S.C. Sections 327, 329 or 1103(b) and Bankruptcy Rule 2014, 2016 and 5002, and setting forth the professional person's connections with the Debtor, creditors or an other party in interest, their respective attorneys and accountants. To the best of Applicant's knowledge, said professional persons have no connections with the Debtor, creditors or any other party in interest, their respective attorneys and accountants, except as disclosed herein. Furthermore, to the best of Applicant's knowledge, the professional person's are not related to a bankruptcy judge. (Bankruptcy rule 2014(a); Guidelines Section 2.1.4).

WHEREFORE, Applicant respectfully requests that the within Application be granted and approved, and that Applicant be authorized to employ and appoint CHRISTOPHER P. BURKE, ESQ. as attorney for Applicant, under a general retainer, in the above-

1 captioned bankruptcy case.

2 DATED this 17 day of August, 2009.

3  
4 see attached

5 Michael Hesser  
6 President & Director

7 Submitted by

8  
9 /s/CHRISTOPHER P. BURKE, ESQ.  
10 CHRISTOPHER P. BURKE, ESQ.  
11 Nevada Bar No.: 004093  
218 S. Maryland Parkway  
Las Vegas, Nevada 89101

captioned bankruptcy case.

DATED this 17<sup>th</sup> day of August, 2009.

  
Michael Hesser  
President & Director

Submitted by:

/S/CHRISTOPHER P. BURKE, ESQ.  
CHRISTOPHER P. BURKE, ESQ.  
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